In the Matter of ENDICOTT JOHNSON CORPORATION, EMPLOYER *and* UNITED SHOE WORKERS OF AMERICA, C. I. O., PETITIONER

Case No. 3–R–1100.—Decided December 16, 1946

Sullivan & Cromwell, by *Mr. Charles S. Hamilton*, of New York City, and *Mr. Howard Swartwood*, of Endicott, N. Y., for the Employer.

Mr. Harry Sacher, of New York City, *Mr. Benjamin C. Sigal*, of Washington, D. C., *Mr. Charles Barranco, Jr.*, of Endicott, N. Y., and *Mr. William DeCelle*, of Johnson City, N. Y., for the Petitioner.

Mr. Samuel M. Kaynard, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

Upon a separate petition duly filed, a hearing was held at Binghamton, New York, on January 22, 1946,[1] before James R. Hemingway, hearing officer, and a further hearing was held at Binghamton, New York, on August 27, 1946, before Francis X. Helgesen, hearing officer. The hearing officers' rulings made at the hearings are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Endicott Johnson Corporation, a New York Corporation, has its principal office and place of business in Endicott, New York. It is engaged in the business of production, manufacture, sale, and distribution of leather, canvas, and rubber footwear at its numerous shoe factories and tanneries in Binghamton, Johnson City, Endicott, West Endicott, and Owego, New York. During the fiscal year ending

[1] The first hearing was held on the petition involved herein and another petition involving the Employer's Security and Security Annex Shoe Factory (Case No 3–R–1113), which had been consolidated for the purpose of hearing by a Board Order dated March 22, 1946. For the purpose of decision, the Board ordered a severance of the case on March 22, 1946 Thereafter, further hearing was held in the case involved herein, on an amended petition.

November 30, 1945, the Employer used raw materials valued at $39,000,000. Approximately 60 percent, by value, of the raw materials so used was shipped to its plants in the State of New York from points outside that State. During the same period, the Employer sold finished products valued at approximately $82,000,000. Approximately 89 percent, by value, of the finished products was shipped from the afore-mentioned plants to points outside the State of New York.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Petitioner claimed representation of a majority of the employees in the Employer's die shop, machine shop, and foundry, and requested recognition as the collective bargaining agent of those employees. The Employer denied the requested recognition, asserting that the proposed unit was inappropriate for the purpose of collective bargaining.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

The Petitioner seeks a unit consisting of the production and maintenance employees of the Employer's die shop, machine shop, and foundry, located at Johnson City, New York, with certain exclusions and inclusions, hereinafter discussed. In the event the Board finds such a unit inappropriate, the Petitioner, in the alternative, seeks three separate units consisting of the production and maintenance employees of each of the afore-mentioned departments. The Employer contends that the unit or units requested by the Petitioner are inappropriate and asserts that the only appropriate unit is one employer-wide consisting of all its production and maintenance employees in its various plants and factories.

The Board has, on numerous occasions, considered the Employer's contention that an employer-wide unit is the only appropriate unit and has held that such contention is not presently tenable.[2] In a recent decision, involving the same parties, the Board, in establishing a unit

[2] *Matter of Endicott Johnson Corporation*, 45 N. L. R. B. 1092; *Matter of Endicott Johnson Corporation*, 57 N. L. R. B. 1473; *Matter of Endicott Johnson Corporation*, 67 N. L. R. B. 1342.

consisting of the production and maintenance employees of the Employer's Security and Security Annex Shoe Factory, stated that "the benefits of collective bargaining will not be denied a smaller group of employees merely because other employees who might be combined with them into a theoretically more appropriate unit have not been organized or have shown no inclination to be represented or organized, provided the unit sought is sufficiently homogeneous, identifiable and distinct.[3]

The Employer's die shop, machine shop, and foundry, for the past 5 years, have been located in the same building, referred to as the "Foundry and Die Shop." The die shop is located on the first floor; the foundry, in an adjoining wing on the first floor; and the machine shop, on the second floor. The die shop's 57 employees are engaged in the manufacture of dies used by the Employer's factories in cutting out all shoe parts, such as linings, box toes, counters and soles. The foundry, consisting of 9 employees, is engaged in the making of castings used in tanneries and factories for any replacements or new machines that are being built. The machine shop employees, of which there are 15, repair factory machines, mostly United Shoe Machinery equipment, and also build mullers or steamers.[4] Since January 1946, the 3 departments have been under the supervision of superintendent Exley. The die shop is under the supervision of a foreman and 2 assistant foremen. Another foreman supervises the machine shop and foundry, with an assistant foreman in charge of the foundry. The employees of all 3 departments are paid at an hourly rate and receive substantially the same wage scale.

Although housed in the same building, each department occupies its own particular area and there is no interchange of employees among the three departments. Each department has its own washing facilities and lockers; the employees of the machine shop and foundry use one time clock, whereas the die shop employees use another; and the die shop employees work until 4 p. m., whereas the other two departments work until 3:30 p. m., the difference being due to the length of the lunch period chosen by the individual departments. While the three departments are geared to the production of the final product, there is little interdependence of operations. These employees perform specialized, and often skilled functions and comprise clearly homogeneous units in the Employer's plant.

The record thus reveals that there are factors which indicate the propriety of a unit of all three departments. On the other hand, their separability, their sharply distinguishable skills, and lack of interdependence, as set forth above, coupled with the failure of the

[3] *Matter of Endicott Johnson Corporation*, 67 N. L. R. B. 1342.

[4] The Employer also operates two other machine shops in Johnson City and Endicott which do general repair work or building of machinery for the shoe factories and departments.

Petitioner to organize among the employees of the machine shop, more persuasively support the appropriateness of separate departmental units at the present time.

The inclusion and exclusion of certain employees within the units hereinafter found appropriate is also in dispute. The parties agree that the foreman of the die shop and the foreman of the machine shop and foundry should be excluded from the unit. However, the Petitioner would also exclude the 3 assistant foremen in the die shop and foundry. These employees, in part, engage in manual labor and also perform supervisory duties. In the die shop, Knickerbocker, one of the assistant foremen, supervises the work of 45 men in the clicker or Walker die section and Mahoney, the other assistant foreman, supervises 12 employees in the perforating section. Knickerbocker and Mahoney receive a higher rate of pay than the other employees. The record reveals that about once a month the assistant foremen engage in conferences with the superintendent on matters of operation and production in the shop. Patchen, assistant foreman in the foundry, has authority similar to Knickerbocker and Mahoney. He supervises the work of the employees in the foundry which is located on the first floor, while the foreman of the machine shop and foundry usually is on the second floor. We are of the opinion that these employees come within the Board's customary definition of supervisory employees. Accordingly, we shall exclude them from the units hereinafter found appropriate.

We find that all production and maintenance employees of the Employer's die shop and foundry, respectively, located on Baldwin Street, Johnson City, New York, but excluding office and clerical employees, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.[5]

V. THE DETERMINATION OF REPRESENTATIVES

At the hearing on January 22, 1946, the Employer requested that its employees presently in the armed forces should be permitted to vote by mail and the Employer indicated that it would cooperate with the Board in furnishing any pay-roll data necessary. We are of the opinion that the facts in this case do not differ substantially from those in *Matters of South West Pennsylvania Pipe Lines*[6] and suc-

[5] Since we are administratively advised that the Petitioner has made no showing of interest among the employees in the machine shop, we shall not direct an election among them nor, do we deem it necessary, at this time, to make any finding with respect to the appropriateness of a unit comprised of those employees

[6] *Matter of South West Pennsylvania Pipe Lines*, 64 N L R B 1384

ceeding cases. Accordingly, we shall grant the Employer's request for mail balloting, subject to the provisions hereinafter mentioned.

We will direct that the question concerning representation be resolved by an election by secret ballot among employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction. In this case, the Regional Director shall mail ballots to employees within the appropriate units on military leave, *provided* one or more of the parties hereto, within seven (7) days from the receipt of the Direction of Elections, files with the Regional Director a list containing the names, most recent addresses, and work classifications of such employees. The Regional Director shall open and count the ballots cast by mail by employees on military leave, *provided* that such ballots must be returned to and received at the Regional Office within thirty (30) days from the date they are mailed to the employees by the Regional Director.[7]

DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Endicott Johnson Corporation, Johnson City, New York, elections by secret ballot shall be conducted as early as possible, but not later than forty-five (45) days from the date of this Direction, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Shoe Workers of America, C. I. O., for the purposes of collective bargaining.

[7] A free interchange between the interested parties of information on the addresses and work categories of the employees to be voted by mail will be necessary in order to avoid challenges and post-election objections. Accordingly, the Board will make available to all interested parties any information of this nature furnished it by any other party. In the event that the parties should send the absentee voters any information or literature bearing directly or indirectly on the pending election, copies of all such documents should be simultaneously filed with the Regional Office for inspection by or transmittal to the other parties. However acceptance or transmittal of such literature by the Board's office is not to be construed as conferring immunity on the filing party in the event that objections are later interposed concerning its content. The usual principles will apply.

MR. JAMES J. REYNOLDS, JR., concurring specially:

I concur with the results reached by the Decision and Direction of Elections herein. However, inasmuch as the Decision does not clearly indicate the basis for the finding that the employees in the die shop and the foundry comprise separate appropriate bargaining units, I am constrained to express my own views on this matter.

The die shop employees manufacture dies used by the Employer's shoe factories. The foundry employees are engaged in making metal castings. The record indicates that there are no other employees of the Employer engaged in either of these occupations. As noted by the Board in numerous decisions,[8] each of these groups of employees has interests relating to the nature of their work and their skills which are sufficiently different from those of other production and maintenance employees to warrant their inclusion in separate collective bargaining units. It appears to me that this rationale affords a sound basis in support of the unit findings herein, and, therefore, I find it unnecessary to consider further the Petitioner's contention that such units are appropriate because its organizational activities have not extended to other employees not included in the unit for which it petitioned or the Employer's contention that only an employer-wide unit consisting of all its employees in its various plants and factories is appropriate.

[8] See *Matter of Aluminum Company of America*, 60 N. L R. B 287; *Matter of Toledo Stamping & Mfg. Co.*, 56 N. L. R. B. 1291; *Matter of Bendix Aviation Corporation, Bendix Products Division*, 56 N. L. R. B. 602; *Matter of American Crucible Products Co.*, 54 N. L. R B 47; *Matter of American Valve Mfg Co*, 58 N. L R. B, 1175.